S.B. CIVIL MISC. APPEAL NO. 1403/2006
(Bhag Chand Vs. Ganpat & ors.)

DATED : 03.10.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Ravi Bhansali with
Mr.Mahendra Prajapat for the appellant

*****

Having heard learned counsel for the claimant-appellant and having perused the impugned award, this Court is satisfied that the award made by the Tribunal in the sum of Rs.65,000/- in favour of the appellant for the loss suffered by him due to the injuries sustained in a vehicular accident remains rather higher than that of just compensation ruling out any scope for enhancement and, therefore, this appeal deserves to be dismissed without being admitted.

On 06.10.1996 at about 10.00 a.m. the claimant-appellant, about 51 years in age, while riding a scooter and going towards Subhash Nagar Secondary School, Bhilwara was hit by on-coming moped bearing registration No. RJ 06 2M 1065 and sustained simple and grievous injuries including fracture of left tibia and fibula bones. The appellant claimed compensation in the sum of Rs.1,90,000/- stating various losses because of hospitalization for two days, treatment for two and half months, pain and agony and 5% permanent

partial disablement. After framing of necessary issues and taking evidence, the Tribunal has found that the accident occurred for rash and negligent driving of the aforesaid moped by its driver; and that the appellant sustained various injuries including fracture of left tibia and fibula bones, and held the non-applicants, driver and owner of the offending vehicle, liable for compensation. The Tribunal has proceeded to exonerate the insurer of its liability for want for valid driving licence with the moped driver on the date of accident but has directed to insurer to make payment to the claimant and then to recover from the owner of the offending vehicle.

While quantifying compensation, the Tribunal has observed with reference to the evidence produced by the claimant that he remained hospitalized for two days, remained immobile for two and half months and suffered 5% permanent partial disablement. The Tribunal has referred to the bills of treatment expenditure produced by the claimant in the sum of Rs. 1950.59 and observed that some bills might not have been retained; that the injured claimant must have taken special diets and must have spent on attendants; that the claimant had to take rest for about three-four months; that the claimant has suffered bony injuries in old age of 51 years leading to permanent pain and agony and discomfort; and then has proceeded to award a lump sum of Rs. 65,000/- towards

compensation and has allowed interest at the rate of 6% per annum from the date of filing of claim application.

Though the approach of the Tribunal in making the award in lump sum cannot be appreciated and desirable it was that the amount of compensation was arrived at after specifying the losses on different relevant heads; but the fact remains that the approach of the Tribunal has resulted in making of an award rather on the higher side and, if at all, the Tribunal has erred in favour of the claimant-appellant.

With reference to the bills of treatment expenditure produced, and providing for a component of lost bills, the claimant could have been allowed Rs. 2,500/- towards treatment expenditure, Rs. 2,000/- on special diets, Rs. 3,000/- on attendants and Rs. 5,000/- towards one grievous injury. The claimant, a school teacher, had to remain immobile for two and half months but there is no evidence of loss of future income or earning capacity. With reference to the treatment period, even if loss of income for about two and half months is considered and then another factor of non-pecuniary loss is liberally considered towards 5% permanent partial disability and age of the claimant, yet the amount of just compensation is likely to fall below Rs. 65,000/- as awarded by the Tribunal.

It is apparent that the Tribunal has allowed the amount of compensation rather liberally and the award made by the

Tribunal cannot be said to be inadequate or falling short of the amount of just compensation admissible in this case. There is no scope for upward revision.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

MK